

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2324 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NG CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR JA ADESHRA for Petitioner
SERVED for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2
MR DC DAVE for Respondent No. 3

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 23/09/97

ORAL JUDGEMENT

The petitioner has been working in the police force and was confirmed in the year 1965 as Police Sub Inspector and was expected to be promoted to the rank of Police Inspector in the month of August 1972. Eventually, he came to be promoted on 1.8.1980. He approached the Court in the year 1980 itself by way of Special Civil

Application No. 1306 of 1980 seeking among other reliefs the relief of deemed to have been promoted earlier than his juniors, that is to say, he should have been promoted in the year 1972.

There are other litigations also preceding and the present one which is referred to in the decision given by the learned single Judge (Coram: M.S. Parikh, J.) in Special Civil Application No. 6919 of 1992 on 25.11.1994.

Special Civil Application No. 4170 of 1989 was with regard to compulsory retirement where he succeeded and subsequently he made an attempt to get the relief of deemed date by making representation to the authorities on 30.3.1992. This Court (Coram: B.C. Patel, J.) while dealing with Special Civil Application No. 4558 of 1992, on 24.7.1992, directed the State to dispose of the representation within six weeks. It was so disposed of on 1.9.1992 but no reasons were assigned and, therefore, this court (Coram: M.S. Parikh, J.) in a very detailed order running into 10 pages directed the department to deal with his representation and give reasons for its decision. No doubt, it may be noted here that the petitioner although out had made it clear that he was not after the monetary benefits, that is to say, arrears of salary, but having retired on 30.4.1995 as Police Inspector, he was naturally interested in the benefits that would accrue to him by way of pension, gratuity, etc., if he succeeded in getting deemed date. In other words, he wanted his pay to be fixed notionally from the date on which he had given up the claim as to the actual payment of salary and if the deemed date is given for the said period he wanted consequences thereof to be given effect to in fixing pension and payment of gratuity and other retirement benefits.

However, the petitioner in Special Civil Application No. 1306 of 1980 had set out the following prayers as quoted in affidavit in reply at page 46, paragraph 4:

"(a) to allow this petition with costs;

(b) to quash and set aside the impugned remarks communicated by the D.I.G.C.I.D. Cr. and Rly. and confirmed by the I.G.P. Ahmedabad (Annexure 'B');

(c) to quash and set aside the order of the C.P. not allowing him to cross E.B., and to direct the authority to consider the petitioner's case for E.B. and allow the same;

- (d) to direct the respondents Nos.2 and 3 to consider the petitioner's case for promotion as P.I. from the date when his juniors were promoted and to declare that he should have been deemed to have been considered and for promotion and promoted earlier than his juniors as if the impugned remarks were not on record;
- (e) to grant such other and further reliefs and pass such other order or orders as the nature and circumstances of the case may require;
- (f) to award the costs of this petition."

While dealing with this petition, this Court (Coram: K.G. Shah, J.) by his order dated 30.9.1991 had recorded that except the relief at para 34 (b) other reliefs were not pressed. The relief at para 34 (b) relates to certain remarks in the confidential report of the petitioner.

The reliefs quoted above clearly referred to the claim for deemed date and without specifying the date it has been related to the promotion of his juniors which now seems to be specified to be the month of August 1972.

The direction of this Court (Coram: M.S. Parikh, J.) was carried out by the department in the form of a reply to the representation at Annexure D, page 20. Annexure 'A' dated 30.1.1995 is a letter in which the entire period from 1973 to 1976 has been referred to with regard to the confidential reports. The criteria as per rule 54 (6) for promotion from the post of Police Sub Inspector to the post of Police Inspector is also referred to and it has been further specified that the same shall have to be "consistently good and steady record". Therefore, the authorities have said that the deemed date could not be given.

In my view, the petitioner has seized upon this reference to past record to challenge the said order but to no avail. If one looks at the brief summary as to the so-called adverse remarks from the year 1963, in the year 1963-64 it was 'not satisfactory' and the same was communicated to the petitioner on 28.6.1968. The period going upto 1963-64, in my view, will not help the petitioner because eventually the promotion was to be given to him in August 1972. As per brief summary starting with 'not satisfactory' for the year 1963-64 the last remark is that of 'average' which has been

communicated on 19.10.1972. However, after the period of 31.12.1968 for the period of 1969-70 his performance is 'fair' which also has been communicated to him on 19.10.1972. Again his performance for the year 1971 is found to be 'below average' of which also he was informed on 19.10.1972. That the remarks for the period from 31.12.1968 to 31.12.1971 have been communicated to the petitioner vide communication dated 19.10.1972 collectively. For the years 1968 to 1972 really only one adverse remark, namely 'below average' which is for the year 1971. This has been communicated in October 1972.

Again there was an adverse remark for the year 1972 and the remark is 'not satisfactory' which has been communicated on 1.6.1973. Again for the period from 30.5.1973 to 31.12.1973 the remark was 'fair' and in the year 1974-75 the remark was 'satisfactory'. In the year 1975-76 the remarks were 'good' and 'fair' and 1976-77 again it was 'not satisfactory'. In fact on 18.7.1977 this remark was communicated to him. Thereafter there was consistent period of good performance recorded 'satisfactory' for three years at a stretch resulting into his promotion. This departmental action now challenged with the aid of the said order of this Court (Coram: M.S. Parikh, J.) as well as Annexure A, but the same will not bring about any change in the outcome. The position as ascertained from the record given to me on behalf of the petitioner really indicates that his case was considered and when found that he is meeting with the requirement of promotional criteria he has been granted promotion.

In this background, when the claim is given up as recorded in the order of Justice K.G. Shah as set out in the affidavit in reply, obviously the petitioner cannot be permitted to get the whole case reopened because of the detailed order of Justice M.S. Parikh, at Annexure G as the petitioner himself has given up his claim of deemed date. Therefore, the petition is not required to be allowed. The petition is rejected. Rule is discharged. No order as to costs.

(ers)